

Sales to the Federal Government are not taxable under the Electricity Excise Tax Law by virtue of the Supremacy Clause of the United States Constitution. See 35 ILCS 640/2-4. (This is a GIL.)

September 5, 2001

Dear Xxxxx:

This letter is in response to your letter dated June 5, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

Based upon a July 30, 1996 letter ruling issued by your office, AAA, including its chapters and service regions within the State of Illinois are exempt from payment of the taxes under the Gas Revenue Tax Act and the Public Utilities Revenue Act. A copy of that letter is attached for your review.

Subsequent to that ruling, the Electricity Excise Tax Law [35 ILCS 640] was signed into law. In compliance with Department's regulations governing a private letter ruling request (2 Illinois Administrative Code 1200.110) I respectfully request a ruling affirming that AAA, including its chapters and service regions within the State of Illinois are exempt from payment of the Electricity Excise Tax. This request is based on the legal status of the AAA and its chartered units as a federal instrumentality. I also request a ruling affirming the AAA and its chartered chapters and service regions are exempt from the taxes authorized under the Emergency Telephone System Act [50 ILCS 750] based on the aforementioned status of the AAA as a federal instrumentality .

The Department of Revenue has not previously ruled on this request, nor is there any litigation or audit pending with respect to this issue. Furthermore, to the best of my knowledge, there are no contrary views regarding the AAA tax exemption status.

Thank you for your consideration of this request. If you need additional information, please call me.

The Electricity Excise Tax Law (35 ILCS 640/1 et seq.) imposes a tax upon the privilege of using in this State electricity purchased for use or consumption and not for resale, other than by municipal corporations owning and operating a local transportation system for public service. Section 2-4(c) of this Law states in part: "[t]he tax imposed by this Section 2-4 is not imposed with respect to

any use of electricity by business enterprises certified under Section 9-222.1 of the Public Utilities Act, as amended, to the extent of such exemption and during the time specified by the Department of Commerce and Community Affairs; or with respect to any transaction in interstate commerce, *or otherwise, to the extent to which such transaction may not, under the Constitution and statutes of the United States, be made the subject of taxation by this State.*" (emphasis added).

The incidence of the Electricity Excise Tax is on the consumers. As a result, the Department believes that sales to the Federal Government are not taxable under the Electricity Excise Tax Law by virtue of the Supremacy Clause of the United States Constitution. This is supported by the definition of the term "person" (and by reference for the term "purchaser") in Section 2-3 of the Electricity Excise Tax Law that fails to reference the Federal Government but does specifically reference "any city, town, village, county, or other political subdivision of this State."

The Illinois Department of Revenue considers the AAA to be an unincorporated instrumentality of the Federal Government. Therefore, the AAA is exempt from payment of taxes under the Electricity Excise Tax Law.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
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